Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)	
10/577,090	FACKLER ET AL.	
Examiner	Art Unit	
MICHAEL B. NELSON	1783	

5. ☐ Applicant's reply has overcome the following rejection(s): 6. ☐ Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). 7. ☑ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☑ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) rejected: 1-24. Claim(s) withdrawn from consideration: AFFIDAVIT OR OTHER EVIDENCE 8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. ☑ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:		MICHAEL B. NELSON	1783		
 1. □ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affiduat, or other evidence, which places the application in condition for allowance; (2) at Notice of Appeal (with appeal fee) in compliance with 37 CFR 4.1.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods: a) □ The period for reply expires on. (1) the mailing date of the final rejection. b) □ The period for reply expires on. (1) the mailing date of the final rejection. Examiner Note: (Fbx 1: a checked, check either box (a) or (b). ONLY CHECK BOX (b) whien The EIRBST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 76.07(f). Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the file. The appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the file. The appropriate extension fee set forth in (b) above, if checked, Any reply received by the Office inter the three months after the maling date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). MONTICE OF Appeal was filed on □ A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal and siles. The proposed amendment filed, any reply must be filed within the time period set forth in 37 CFR 41.37(e), to avoid dismissal of the appeal. Since a Notice of Appeal and for a filed after a final rejection, but prior to the date of filing a brief, wil	The MAILING DATE of this communication appea	ars on the cover sheet with the c	correspondence add	ress	
application, applicant must timely file one of the following replies: (1) an amendment, affidant, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 4.1.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods: a) The period for reply expires on; (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection. The period for reply expires on; (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, with the statutory period for reply expire later than \$1X MONTHS from the mailing date of the final rejection. Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed is the date for purposes of determining the period of extensions and the corresponding amount of the fee. The appropriate extension fee have been filed at the date for purposes of determining the period of extensions and the corresponding amount of the fee. The appropriate extension fee have been filed; and a second proper of the filed from (i) the experience of the shortened statutory period for reply originally set in the filed force action; or (2) as a many reduce any earned palant term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL 1 The Notice of Appeal was filed on	THE REPLY FILED <u>06 July 2010</u> FAILS TO PLACE THIS APPL	ICATION IN CONDITION FOR AL	LOWANCE.		
a)	application, applicant must timely file one of the following reapplication in condition for allowance; (2) a Notice of Appel for Continued Examination (RCE) in compliance with 37 Cl	eplies: (1) an amendment, affidavit al (with appeal fee) in compliance	t, or other evidence, w with 37 CFR 41.31; or	hich places the (3) a Request	
no event, however, will the statulory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. Examiner Note: If box 1 is checked, check either box (a) or (b), ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 708.07(f). Extensions of time may be obtained under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for jurposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed is the date for jurposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed is the date for (a) the expiration date of the shortened statutory period for reply display the in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.70(b). NOTICE OF APPEAL. In the Notice of Appeal was filed on	i - 1	of the final rejection.			
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NOTICE OF APPEAL 2. ☐ The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). AMENDMENTS 3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☐ They raise the issue of new matter (see NOTE below); (b) ☐ They raise the issue of new matter (see NOTE below); (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: (See 37 CFR 1.116 and 41.33(a)). 4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☐ Applicant's reply has overcome the following rejection(s): on the proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). 7. ☑ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☑ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) objected: 1-24. Claim(s) withdrawn from consideration:	Extensions of time may be obtained under 37 CFR 1.136(a). The date of have been filed is the date for purposes of determining the period of extender 37 CFR 1.17(a) is calculated from: (1) the expiration date of the strength in (b) above, if checked. Any reply received by the Office later the set of the set	n which the petition under 37 CFR 1.1: ension and the corresponding amount of nortened statutory period for reply origi	of the fee. The appropria nally set in the final Offic	ate extension fee e action; or (2) as	
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12. Note the attached Information <i>Disclosure Statement</i> (s). (PTO/SB/08) Paper No(s) 13. Other:	12. ☐ Note the attached Information <i>Disclosure Statement</i>(s). (§13. ☐ Other:	PTO/SB/08) Paper No(s)			
/Patricia L. Nordmeyer/		/Patricia L Nordmever/			
Primary Examiner, Art Unit 1783			nit 1783		